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April 8, 2008

MUR # 5996

Thomasenia Duncan, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Complaint against Unnamed Organization and Tim Bee for Congress

Dear Ms. Duncan,

I write this letter to file a complaint pursuant to 2 U.S.C. § 437g(a)(1) against Tim Bee for Congress and an unnamed organization that is running television advertisements in Arizona that expressly advocate the election of Tim Bee to the United States Congress. The facts indicate that the unnamed organization is operating in complete contravention of federal campaign finance laws – it has paid for an ad on his behalf that advocates his election, yet failed to register and report as a political committee with the Federal Election Commission and failed to include the required disclaimer on its broadcast advertisements. In addition, by accepting an in-kind contribution from the unnamed organization, Tim Bee for Congress has accepted corporate contributions that are expressly prohibited under federal law. The Commission should immediately investigate these violations.

THE FACTS

On or before March 28, 2008, an unnamed organization¹ began to air a television advertisement that expressly advocates the election of Tim Bee on selected cable stations in the state of Arizona.

The transcript of the television advertisement is as follows:

Thank you, Senator Bee. Senator Bee, I would like to thank you as a parent for your continued support of education. Thank you Senator Bee for supporting students in southern Arizona. Senate

¹ Published news accounts have alleged that the organization paying for the ad is a lobbying group called the "Education Finance Reform Group." See Daniel Scarpinato, *Tax Dollars Fund 30-Second TV Spot Lauding Bee*, *Ariz. Daily Star*, April 8, 2008.

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Bill 1488, sponsored by Senate President Tim Bee, will level the playing field so that all teachers in southern Arizona will receive greater pay for performance. The Tucson Citizen stated "Bee's bill, supported by school districts, parents, teachers, and advocates of education, would allow all districts to participate." Tim Bee: Fighting for fairness for southern Arizona. Thank you, Senator Bee.

Arizona State Senate President Tim Bee is the Republican nominee for the 8th Congressional District in the state of Arizona. The Senate Bill referenced in the advertisement has been passed by the Arizona Senate. Richard Connet, president of the Vail Education Association, appears in the advertisement to thank Senator Bee for supporting students in southern Arizona. In a news article, Connet acknowledged that all of the participants in the advertisement "knew it was going to be used ... for [Bee's] run against [Democratic congressional candidate Gabrielle] Giffords." See Daniel Scarpinato, *Tax Dollars Fund 30-Second TV Spot Lauding Bee*, Ariz. Daily Star, April 8, 2008.

The advertisement includes footage of Senator Bee on the Arizona Senate floor, as well as footage of Senator Bee conversing with constituents. At the end of the advertisement, Senator Bee's image appears on the screen with the written statement, "Tim Bee. Senate Bill 1488. Fighting for southern Arizona." There is no written or audio disclaimer at any point during the advertisement. The advertisement ran across the 8th Congressional district, but far beyond Senator Bee's current state legislative district.

ARGUMENT

A. The Television Advertisement Expressly Advocates Bee's Election

The ad expressly advocates Tim Bee's election, and is a contribution to him. The Commission's regulations define "expressly advocating" to include communications that "[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate." 11 C.F.R. § 100.22(b).

A reasonable person cannot possibly interpret this ad to be anything other than express advocacy. Airing in the midst of a heated campaign for United States Congress, and airing across the Congressional district and beyond a state senator's current legislative district, it purports to "thank" a federal candidate for his involvement with a state bill that has already passed the Arizona Senate. Indeed, the slogan at the end, "Tim Bee: Fighting for fairness for southern Arizona," is very similar to the slogan, "Rick Renzi/Improving the Quality of Life in Arizona," that the Commission found to be express advocacy in MURs 5577 and 5620. The only reasonable interpretation is that the advertisement advocates the election of Tim Bee.

B. Tim Bee for Congress Accepted Illegal and Excessive Corporate Contribution

Federal election law prohibits candidates and candidate committees from accepting corporate contributions of any amount in connection with any election to federal office. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2. In addition, other persons are prohibited from contributing more

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than \$2,300 per election to federal candidates. 2 U.S.C. § 441a(a)(1). On information and belief, the unnamed organization that paid for the television advertisement is a corporation. On information and belief, the value of the communication is in excess of \$2,300.² By definition, a coordinated communication is in-kind contribution. See 11 C.F.R. § 109.21(b).

This ad is plainly a contribution to Bee. The circumstances surrounding the ad show no effort to limit his involvement in it. Moreover, the facts tend to show that the ad was prepared for the purpose of aiding his campaign. Accordingly, Bee and his campaign received an illegal corporate and excessive contribution.

C. Unnamed Organization Failed to File with the Commission

Groups of persons who make expenditures in excess of \$1,000 in a calendar year are required to register with and report to the Commission as political committees. See 2 U.S.C. § 431(4)(A). On information and belief, the unnamed organization has spent more than \$16,000 on efforts to influence the upcoming Federal election in 8th Congressional District in the state of Arizona. By paying for a coordinated communication, the unnamed organization has made an in-kind contribution to Tim Bee for Congress and appears to have as its major purpose the nomination or election of candidates for Federal office. The unnamed organization is nothing more or less than a political committee under federal law, and must obey the reporting requirements of a political committee.

D. Television Advertisement Does Not Have Required Disclaimers

A communication that is paid for by a political committee and not authorized by a candidate must "clearly state the name and permanent street address, telephone number or World Wide Web address of the person who paid for the communication and state that the communication is not authorized" by the candidate. 2 U.S.C. § 441d(a)(3); 11 C.F.R. § 110.11(b)(3). In addition, a television advertisement that is not authorized by the candidate must include the following audio statement: "_____ is responsible for the content of this advertising." 2 U.S.C. § 441d(d)(2); 11 C.F.R. § 110.11(c)(4). Separate requirements apply if the candidate indeed authorized the ad.

The television advertisement paid for by the unnamed organization fails to meet the disclaimer requirements. The advertisement does not identify the organization that paid for the advertisement, does not include a street address, phone number, or internet address for the organization paying for the advertisement, and does not state whether the advertisement was authorized by the candidate. Furthermore, the advertisement does not include an audio statement that the unnamed organization is responsible for the content of the advertising. These are clear violations of federal election law.

For the foregoing reasons, we demand that the Commission investigate immediately the violations presented herein. We request that Tim Bee for Congress and the unnamed organization be enjoined from further violations, and be fined the maximum amount permitted by law.

² News accounts alleged that the payor spent \$16,000 on the communication. See Scarpinato, *supra* note 1.

Sincerely,

Don Sweezy

SUBSCRIBED AND SWORN to before me this 11 day of April, 2008.

Wilma Simon
Notary Public

My Commission Expires:

Wilma Simon
Notary Public, District of Columbia
My Commission Expires 7/31/2012

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